

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 JAMI HUNTING, an individual,

10 Plaintiff,

11 v.  
12 AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY, a foreign  
insurance company,

13 Defendant.

14 CASE NO. 3:19-cv-05783-RBL

15 ORDER ON DEFENDANT'S MOTION  
FOR RECONSIDERATION

16 DKT. # 20

17 THIS MATTER is before the Court on Defendant American Family Mutual Insurance  
18 Company's Motion for Reconsideration, which ask the Court to revisit its April 29 Order  
19 denying partial summary judgment. Dkt. # 20. In that Order, the Court determined that there  
20 were issues of fact regarding whether American Family is equitably estopped from asserting the  
21 suit limitations period in the policy issued to Jami Hunting. Dkt. # 19.

22 Under Local Rule 7(h)(1), motions for reconsideration are disfavored, and will ordinarily  
23 be denied unless there is a showing of (a) manifest error in the ruling, or (b) facts or legal  
24 authority which could not have been brought to the attention of the court earlier, through  
reasonable diligence. The term "manifest error" is "an error that is plain and indisputable, and  
that amounts to a complete disregard of the controlling law or the credible evidence in the

1 record.” Black’s Law Dictionary 622 (9th ed. 2009). “Whether or not to grant reconsideration is  
 2 committed to the sound discretion of the court.” *Navajo Nation v. Confederated Tribes & Bands*  
 3 *of the Yakima Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

4 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of  
 5 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d  
 6 877, 890 (9th Cir. 2000). “[A] motion for reconsideration should not be granted, absent highly  
 7 unusual circumstances, unless the district court is presented with newly discovered evidence,  
 8 committed clear error, or if there is an intervening change in the controlling law.” *Marlyn*  
 9 *Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Neither  
 10 the Local Civil Rules nor the Federal Rule of Civil Procedure, which allow for a motion for  
 11 reconsideration, is intended to provide litigants with a second bite at the apple. A motion for  
 12 reconsideration should not be used to ask a court to rethink what the court had already thought  
 13 through — rightly or wrongly. *Defenders of Wildlife v. Browner*, 909 F.Supp. 1342, 1351 (D.  
 14 Ariz. 1995). Mere disagreement with a previous order is an insufficient basis for reconsideration,  
 15 and reconsideration may not be based on evidence and legal arguments that could have been  
 16 presented at the time of the challenged decision. *Haw. Stevedores, Inc. v. HT & T Co.*, 363 F.  
 17 Supp. 2d 1253, 1269 (D. Haw. 2005).

18 Here, American Family’s position boils down to mere disagreement with the prior order.  
 19 American Family insists, as it did previously, that its compliance with WAC 284-30-380(5)  
 20 somehow precludes equitable estoppel and that Hunting could not have reasonably relied on any  
 21 alleged ongoing negotiations with American Family.

22 First, American Family’s reliance on WAC 284-30-380(5) continues to be misplaced.  
 23 The purpose of that chapter is to “define certain *minimum* standards which, if violated with such  
 24

1 frequency as to indicate a general business practice, will be deemed to constitute unfair claims  
 2 settlement practices.” WAC 284-30-300 (emphasis added). The regulations themselves nor any  
 3 case law presented by American Family mention a relationship between WAC 284-30-380(5)  
 4 and the application of equitable estoppel. Compliance with WAC 284-30-380(5) therefore does  
 5 not preclude equitable estoppel.

6 Second, American Family’s argument that Hunting could not have reasonably relied on  
 7 any ongoing negotiations with American Family past the May 3 filing deadline ignores the  
 8 content of Jack Thomas’s declaration. Thomas, a public adjuster and president of Casualty Loss  
 9 Consultants, Inc., negotiated Hunting’s claim with American Family on her behalf. In his  
 10 declaration, Thomas states:

11 Through the spring of 2019, I continued to approach Defendant with adjusting the  
 12 Hunting claim further, including a letter dated May 1, 2019. After the May 1,  
 13 2019 letter, I had several conversations with the American Family adjuster. These  
 14 conversations occurred in late May and June 2019. During these conversations,  
 15 the adjuster told me that he would reinspect the loss again and that the damage by  
 16 the tenants would be more fully considered if a more accurate loss date could be  
 17 determined. I spoke with Ms. Hunting after that and was informed by her that  
 18 90% of the vandalism damage occurred during the few weeks between when she  
 19 gave them a lease termination notice and they moved out. The damage was  
 20 retaliation for the lease termination. In late May or early June, the American  
 21 Family adjuster told me that he would speak with management and recommend  
 22 that the company cover the entire loss. After that conversation, the adjuster failed  
 23 to call me back and never returned my calls to him.

24 Dkt. # 15 at 2-3. While American family may be correct that this declaration is “self-serving,”  
 1 the Court disagrees that it is “immaterial.” Motion, Dkt. # 20, at 6. According to Thomas,  
 2 American Family continued to negotiate the claim and was even amenable to altering its position  
 3 and covering the damage past the May 3 deadline. Thomas’s testimony could allow a reasonable  
 4 juror to find that Hunting was “justified in believing that [American Family] would continue to  
 5 investigate [her] claim, and continue to work towards settlement, without requiring [her] to file

1 suit.” *Chong v. Safeco Ins. Co. of Am.*, No. C05-0974RSM, 2006 WL 1169788, at \*5-6 (W.D.  
2 Wash. Apr. 27, 2006).

3 The Court did not commit clear error and American Family’s Motion for Reconsideration  
4 is DENIED.

5 IT IS SO ORDERED.

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7 Dated this 11th day of May, 2020.

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10 Ronald B. Leighton

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12 United States District Judge